

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ASTELLAS INSTITUTE FOR
REGENERATIVE MEDICINE, and
STEM CELL & REGENERATIVE
MEDICINE INTERNATIONAL, INC.,

Plaintiffs,

v.

IMSTEM BIOTECHNOLOGY,
INC., XIAOFANG WANG, and
REN-HE XU,

Defendants.

Civil Action No. 1:17-cv-12239-ADB

Hon. Allison D. Burroughs

JOINT MOTION TO MODIFY SCHEDULING ORDER

Pursuant to L.R. 16.1(g), the Court’s instructions to counsel during the July 23, 2019 status conference, and the Court’s August 21, 2019 Memorandum and Order (ECF No. 85), Defendants ImStem Biotechnology, Inc. (“ImStem”), Xiaofang Wang, and Ren-He Xu (collectively, “Defendants”) and Plaintiffs Astellas Institute for Regenerative Medicine (“Astellas”) and Stem Cell & Regenerative Medicine International, Inc. (collectively, “Plaintiffs”) hereby move to modify and extend the most recent Scheduling Order entered in this case (ECF Nos. 56, 57) to alter the dates for expert discovery and to provide additional dates for the remainder of the case. In support of this Joint Motion, the parties state as follows:

During the July 23, 2019 status conference, the Court considered the parties’ proposed schedules, stated that it wanted trial scheduled for April 2020, and ordered the parties jointly to propose a schedule that fit within that timeframe. Since that status conference, the Court has

granted Defendants’ motion to amend their Counterclaims (ECF. No. 85) to add a counterclaim concerning U.S. Patent No. 8,963,321 (the “’321 patent”), Defendants have filed their Amended Counterclaims and Plaintiffs have answered (ECF Nos. 91, 92), and the parties have completed all outstanding fact discovery – except for 1) a supplemental deposition of Dr. Xu directed to the ‘321 patent, which is scheduled for October 1, 2019, and 2) the parties’ respective responses to previously-served interrogatories regarding Defendants’ newly allowed counterclaim concerning the ‘321 patent. In addition, on September 12, 2019, the parties filed a joint stipulation regarding a divisional application of ImStem’s U.S. Patent No. 9,745,551. And on September 13, 2019, Plaintiffs filed their motion for leave to file an amended complaint to add a new count for breach of contract, which is pending.

The parties have met and conferred and respectfully request the following schedule for the remainder of this case. A proposed order reflecting the new deadlines is attached as Exhibit A.

Event	Proposed Date
Deadline for completion of outstanding fact discovery	Complete, except as to 1) the Xu deposition (scheduled for October 1, 2019) and 2) interrogatories regarding the newly allowed counterclaim concerning the ‘321 patent (deadlines below)
Deadline to serve interrogatories regarding Defendants’ newly allowed counterclaim concerning the ‘321 patent	September 17, 2019
Opening expert reports	October 4, 2019
Deadline to respond to interrogatories regarding Defendants’ newly allowed counterclaim concerning the ‘321 patent	October 15, 2019
Rebuttal expert reports	November 1, 2019
Completion of expert discovery	December 4, 2019
Motions for summary judgment, and opening briefs	December 19, 2019
Oppositions to motions for summary judgment	January 10, 2020
Replies to motions for summary judgment	January 24, 2020

Event	Proposed Date
Oral argument on motions for summary judgment	At the Court's convenience the weeks of February 3 or 10, 2020
Initial pretrial conference	At the Court's convenience the weeks of February 3 or 10, 2020
Parties exchange lists of previously disclosed fact witnesses, including experts who are expected to provide fact testimony, that they intend to call at trial and any deposition designations	February 21, 2020
Parties exchange lists of exhibits that they intend to use at trial	February 21, 2020
Motions in limine and Daubert motions, and opening briefs	February 28, 2020
Oppositions to any motions in limine or Daubert motions	March 18, 2020
Reply to any motions in limine or Daubert motions	March 25, 2020
Parties exchange list of rebuttal fact witnesses they intend to call at trial, and objections to any designated deposition testimony and any counter-designations	March 27, 2020
Parties exchange objections to exhibits intended to be used at trial	March 25, 2020
Oral argument on Daubert motions and motions in limine	At the Court's convenience the week of March 30, 2020
Joint pretrial memorandum due per L.R. 16.5(d)	April 10, 2020, or no later than 7 days before the final pretrial conference
Deadline to file proposed voir dire, proposed jury instructions, and/or a special verdict form	April 13, 2020
Final pretrial conference	At the Court's convenience, or during week of April 13, 2020
Trial Brief due per L.R. 16.5(f)	April 15, 2020
Trial	2 weeks beginning on April 27, 2020

Date: September 18, 2019

Respectfully submitted,

/s/ Rebecca L. Rabenstein

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document filed through the ECF system will be sent electronically to the registered participants as identified in the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Date: September 18, 2019

/s/ Timothy R. Shannon
Timothy R. Shannon